

AMENDED IN SENATE JUNE 18, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1955

Introduced by Assembly Member Plescia

February 13, 2008

An act to amend Section 1204.5 of the Penal Code, relating to criminal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1955, as amended, Plescia. Criminal actions: pretrial information: ~~domestic violence restraining~~ *criminal protective* orders.

Under existing law, a judge in any criminal action may not read or consider any written report of a law enforcement officer or witness, or other information or affidavit, after a complaint or accusatory pleading is filed but before a plea, finding, or verdict is made, without the defendant's consent, except as provided in affidavits in connection with the issuance of a warrant or other specified motions.

This bill would add another exception to that prohibition when the report to a judge or information is provided in connection with the consideration of the issuance of a ~~domestic violence restraining~~ *criminal protective* order or the parameters of that order *when counsel for the defendant is not present*. The bill would require any ~~information read and considered by the judge for purposes of the issuance of a domestic violence restraining order to be placed in the file under seal~~ *report considered in determining whether to issue a criminal protective order to comply with certain provisions relating to the protection of confidential personal information. The bill would provide that any*

criminal protective order issued pursuant to these provisions shall terminate no later than the next hearing when counsel for the defendant is present.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1204.5 of the Penal Code is amended to
2 read:

3 1204.5. (a) In any criminal action, after a complaint or other
4 accusatory pleading is filed and before a plea, finding, or verdict
5 of guilty, the judge shall not read or consider any written report
6 of any law enforcement officer or witness to any offense, any
7 information reflecting the arrest or conviction record of a
8 defendant, or any affidavit or representation of any kind, verbal
9 or written, without the defendant's consent given in open court,
10 except as provided in the rules of evidence applicable at the trial,
11 or as provided in affidavits in connection with the issuance of a
12 warrant or the hearing of any law and motion matter, or in any
13 application for an order fixing or changing bail, or in consideration
14 of the issuance of a ~~domestic violence restraining~~ *criminal*
15 *protective order* or the parameters of that order *when counsel for*
16 *the defendant is not present*, or in a petition for a writ. ~~Any~~
17 ~~information read and considered by the judge for purposes of the~~
18 ~~issuance of a domestic violence restraining order pursuant to this~~
19 ~~subdivision shall be placed in the file under seal. Any report~~
20 ~~considered in determining whether to issue a criminal protective~~
21 ~~order shall comply with Section 964, in order to protect~~
22 ~~confidential personal information described in subdivision (b) of~~
23 ~~that section. Any criminal protective order issued pursuant to this~~
24 ~~section shall terminate no later than the next hearing when counsel~~
25 ~~for the defendant is present.~~

26 (b) This section does not preclude a judge, who is not the
27 preliminary hearing or trial judge in the case, from considering
28 any information about the defendant for the purpose of that judge
29 adopting a pretrial sentencing position or approving or disapproving
30 a guilty plea entered pursuant to Section 1192.5, if all of the
31 following occur:

1 (1) The defendant is represented by counsel, unless he or she
2 expressly waives the right to counsel.

3 (2) Any information provided to the judge for either of those
4 purposes is also provided to the district attorney and to the defense
5 counsel at least five days prior to any hearing or conference held
6 for the purpose of considering a proposed guilty plea or proposed
7 sentence.

8 (3) At any hearing or conference held for either of those
9 purposes, defense counsel or the district attorney is allowed to
10 provide information, either on or off the record, to supplement or
11 rebut the information provided pursuant to paragraph (2).